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ing the use of property would be valid since the holding of property is subject at all times to a valid exercise of the police power.⁶³

Conclusion

The development of the Louisiana law of building restrictions will probably continue to be through further legislative enactments and adaptation of common law theories and civilian theories of servitude. Since there seems to be no predominance of adaptation of the common law or civilian theories, it would seem that the courts in developing the jurisprudence will continue to adapt the rules that appear to give the more just results.

Martin Smith, Jr.

Union Enforcement of Individual Employee Rights Arising from a Collective Bargaining Contract

It appears to be settled that vis a vis the employer, a collective bargaining contract creates rights for individual employees, as well as for unions.¹ The distinction between employee and union rights may be illustrated by comparing a contract provision which concerns individual wages of the employees² with a provision which provides for arbitration of grievances.³ This Comment is concerned with the enforcement by a union of the individual rights of the employees as against the employer.

Section 301(a) of the Labor-Management Relations Act provides that either the union or the employer may sue in the federal courts for the enforcement of a collective bargaining contract.⁴ It has been held, however, that the individual em-

63. *Ransome v. Police Jury of Parish of Jefferson*, 216 La. 994, 45 So.2d 601 (1950).

1. Howlett, *Contract Rights of the Individual Employee as Against the Employer*, 8 LAB. L.J. 316, 319 (1957); *Report of Committee on Improvement of Administration of Union Management Agreements, 1954*, 50 NW. L. REV. 143, 158 (1955).

2. See *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437 (1955).

3. See *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957).

4. 61 STAT. 156 (1947), 29 U.S.C. § 185(a) (1952): "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States

ployee may not bring suit in federal court under this section.⁵ Since many of the provisions of a collective bargaining contract run to the individual employees, the question of whether the union may enforce these individual rights under Section 301 was raised. The federal jurisprudence in this area has fallen into three general categories: (1) suits by a union for the enforcement of an individual right which arises from a collective bargaining contract; (2) suits by a union to compel the employer to arbitrate individual grievances of the employee, pursuant to the grievance machinery set out in the collective bargaining contract; and (3) suits by a union for enforcement of an arbitrator's award which runs to the individual employee. These three categories will be discussed separately, and will be followed by a discussion of the jurisdiction of state courts and the law applicable therein.

*Suits by a Union for the Enforcement of an Individual Right
Which Arises from a Collective Bargaining Contract*

In *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*,⁶ the union brought suit under Section 301 on behalf of some four thousand employees. Each employee claimed damages in the amount of one day of back pay resulting from the employer's alleged breach of the collective bargaining contract. The United States Supreme Court, in a six to two decision, held that Section 301 did not confer jurisdiction on the federal court in this type of case. Although there was no majority opinion, the three concurring opinions agreed that Section 301 and its legislative history did not indicate sufficiently an intention to allow the union standing to enforce individual rights of the employees. As expressed by Mr. Chief Justice Warren in his concurring opinion, these rights are "uniquely personal" to the employees, and not enforceable by the union in the federal courts.⁷ Mr. Justices Douglas and Black dissented on the grounds that since the union represented the employees in the collective bargaining process, it should be allowed to enforce any right created thereby

having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." This section will be referred to hereafter as Section 301.

5. *United Protective Workers of America v. Ford Motor Co.*, 194 F.2d 997 (7th Cir. 1952); *Shatte v. Theatrical Stage Employees and Moving Picture Machine Operators*, 182 F.2d 158 (9th Cir. 1959), cert. denied, 340 U.S. 827 (1950).

6. 348 U.S. 437 (1955).

7. *Id.* at 461.

in the federal courts.⁸ The courts of appeals have applied the doctrine of this case to bar any suit under Section 301 in which the union has attempted to enforce uniquely personal rights of the employees. These have included rights as to health and welfare funds,⁹ discharge without notice,¹⁰ and pensions.¹¹

Suits By Unions to Compel Arbitration of Individual Grievances of Employees

In *Textile Workers Union of America v. Lincoln Mills of Alabama*,¹² the union sued for the enforcement of an agreement to arbitrate grievances. The specific grievances involved were the work loads and work assignments of several employees, and would appear to be in the nature of uniquely personal rights. The Supreme Court, however, enforced the agreement, distinguishing the *Westinghouse* case on the grounds that an agreement to arbitrate involves the union as an entity, whereas the collection of back pay is an individual right of the employee.¹³ Thus, the federal courts do have jurisdiction under Section 301 of a suit by a union to compel the employer to arbitrate grievances of the individual employee.

Suits by a Union To Enforce an Arbitrator's Award Which Runs to the Individual Employees

After the *Lincoln Mills* case there was speculation as to whether *Lincoln Mills* or *Westinghouse* would control cases in which a union sued, under Section 301, for enforcement of an arbitrator's award which ran to the individual employees. There was a division of authority among the courts of appeals on this matter, with two circuits enforcing the award on the basis of *Lincoln Mills*,¹⁴ and one denying jurisdiction of the suit on the

8. *Id.* at 464.

9. *International Garment Workers Union v. Jay Ann Co.*, 228 F.2d 632 (5th Cir. 1956).

10. *United Electrical Radio and Machine Workers v. General Electric Co.*, 231 F.2d 259 (D.C. Cir. 1956), cert. denied, 352 U.S. 872 (1956).

11. *United Steelworkers of America v. Pullman Standard Car Manufacturing Co.*, 241 F.2d 547 (3d Cir. 1957).

12. 353 U.S. 448 (1957).

13. *Id.* at 456, n. 6

14. *Oil, Chemical & Atomic Workers Union v. Delta Refining Co.*, 277 F.2d 694 (6th Cir. 1960); *Textile Workers Union of America v. American Thread Co.*, 271 F.2d 277 (4th Cir. 1959); *Enterprise Wheel & Car Corp. v. United Steelworkers of America*, 269 F.2d 327 (4th Cir. 1959) (award not enforced on other grounds); *Textile Workers Union of America v. Cone Mills*, 268 F.2d 920 (4th Cir. 1959); *Kornman Co. v. Clothing Workers*, 264 F.2d 733 (6th Cir. 1959).

basis of *Westinghouse*.¹⁵ In *Enterprise Wheel & Car Corp. v. United Steelworkers*,¹⁶ an arbitrator had reinstated eleven discharged employees with back pay. Upon the employer's refusal to comply with the award, the union moved for its enforcement under Section 301. The district court directed the employer to comply, but this judgment was modified by the Fourth Circuit Court of Appeals.¹⁷ On certiorari, the Supreme Court reinstated the award in its entirety, finding that the court of appeals had exceeded its jurisdiction in modifying the award.¹⁸ The possible application of the *Westinghouse* case was not mentioned, although the employer had contended in the lower courts that this case should control and deny jurisdiction of the suit. Thus, on the basis of the *Enterprise* case, a union apparently may sue in the federal courts under Section 301 for the enforcement of an arbitrator's award which runs to the individual employees.

State Court Jurisdiction and Applicable Law

The holdings of *Lincoln Mills* and *Enterprise* indicate that the federal courts will enforce an agreement to arbitrate individual grievances as well as the corresponding award under Section 301. The question remains as to whether the union may bring such suits in state courts, and if so, whether the state courts should apply federal or state law.

As stated by Mr. Justice Bradley in *Claffin v. Houseman*,¹⁹ "[I]f exclusive jurisdiction [in the federal courts] be neither express nor implied, the State courts have concurrent jurisdiction [to enforce federal rights] whenever, by their own constitution, they are competent to take it." Section 301 does not expressly withdraw state court jurisdiction, and its legislative history does not imply that such was the intent of Congress.²⁰ This suggests that state jurisdiction was to be supplemented rather than superseded by the statute.²¹ In line with this reasoning, several state courts have exercised jurisdiction over suits which

15. *Mississippi Valley Electric Co. v. Local 130 of the International Brotherhood of Electrical Workers*, 278 F.2d 764 (5th Cir. 1960).

16. 168 F.Supp. 308 (S.D. W. Va. 1958).

17. 269 F.2d 327 (4th Cir. 1959).

18. 4 L.Ed.2d 1424 (U.S. 1960).

19. 93 U.S. 130, 136 (1876).

20. In this connection see Wollett & Wellington, *Federalism and Breach of the Labor Agreement*, 7 STAN. L. REV. 445, 454 (1955).

21. See Meltzer, *The Supreme Court, Congress and State Jurisdiction over Labor Relations*, 59 COLUM. L. REV. 269, 277 (1959).

apparently could have been brought in the federal court under Section 301.²²

The question of whether the state court should apply federal or state law in these cases is also raised. In *Lincoln Mills*, the Court said that in Section 301 cases *federal* interpretation of federal law governs and that this body of law was to be fashioned by the courts from the national labor laws.²³ Therefore, in actions brought in state courts to enforce the federal right granted under Section 301, it would appear that federal substantive law should be applied. The several state courts which have exercised jurisdiction in the *Lincoln Mills* and *Enterprise* type cases have applied law which is compatible with federal law. As stated by Justice Traynor of the California court, "It is obvious that in exercising this jurisdiction state courts are no longer free to apply state law, but must apply the federal law of collective bargaining agreements."²⁵ Therefore, it would appear that federal law will be applied in both the federal and state forums, and that both an agreement to arbitrate and an arbitration award will be enforceable.

The *Westinghouse* case held that the union has no standing under Section 301 to enforce individual rights of employees concerning back pay. The courts of appeals have applied this doctrine to bar these suits whenever the rights involved are considered to be uniquely personal.²⁶ Consequently, union rights which arise from a collective bargaining contract may be enforced in either the federal or state court, but uniquely personal rights which arise from the same contract may be enforced only in the state court.²⁷

22. *McCarroll v. Los Angeles County District Council of Carpenters*, 49 Cal.2d 45, 315 P.2d 322 (1957), cert. denied, 355 U.S. 932 (1958); *Coleman Co. v. International Union, United Auto Workers*, 181 Kan. 969, 317 P.2d 831 (1957); *Steinberg v. Mendel Rosenweig Fine Furs Inc.*, 9 Misc.2d 611, 167 N.Y.S.2d 865 (Sup. Ct. 1957); *Oil, Chemical & Atomic Workers International Union v. Lone Star Producing Co.*, 332 S.W.2d 151 (Tex. Civ. App. 1959).

Several actions which have been instigated in state court have been removed by the defendant to the federal court. E.g., *Minkoff v. Scranton Frocks, Inc.*, 181 F. Supp. 542 (S.D.N.Y. 1960); *Swift & Co. v. United Packinghouse Workers*, 177 F. Supp. 511 (D. Colo. 1959).

23. *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 456 (1957).

24. See note 22 *supra*.

25. *McCarroll v. Los Angeles County District Council of Carpenters*, 49 Cal.2d 45, 315 P.2d 322, 330 (1957).

26. See notes 9, 10, and 11 *supra*.

27. This could be done by the union, if it has a standing under the state law, or by the individual employee. As Mr. Justice Frankfurter stated in the *Westinghouse* case: "The employees have always been able to enforce their rights in the

As to the question of which substantive law should be applied in this area by the state court, this situation differs from that of *Lincoln Mills* and *Enterprise* in that here the federal courts would not have concurrent jurisdiction. The *Lincoln Mills* case held that the federal courts were to fashion a body of federal law to apply in Section 301 cases involving collective bargaining contracts.²⁸ It could be argued that this body of federal law should preempt any state law which is incompatible with it, and that federal law should govern all areas in collective bargaining contracts.²⁹ This would mean that the state courts should apply federal law in enforcing uniquely personal rights, even though the *Westinghouse* case would preclude enforcement of these rights in the federal courts. Such an interpretation would have the virtue of placing all rights which arise from a collective bargaining contract under one body of substantive law. On the other hand, it could be argued that Section 301, as interpreted in *Westinghouse*, does not grant a federal right to enforce uniquely personal rights of employees. Therefore, there is no basis for supposing that any existing state causes of action are preempted, and the *Westinghouse* type case would be governed by state law in the state court.³⁰ The result of this interpretation would be that union rights would be governed by federal law, but uniquely personal rights which arise from the same contract would be governed by state law. In the few cases which have been decided in this area the issue has not been presented, probably because there was no obvious conflict between the state and federal law.³¹

The rationale of the Court in *Westinghouse* and, more especially, the utility of the decision today, have been questioned by several writers.³² Common sense would seem to dictate that all rights which arise from any contract should be enforceable in

state courts." *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 460 (1955).

28. *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 456 (1957).

29. Where state law is in conflict with federal law, the state law must yield. *Adams v. Maryland*, 347 U.S. 179 (1954).

30. For an extensive discussion of this area, see Wollett & Wellington, *Federalism and Breach of the Labor Agreement*, 7 STAN. L. REV. 445, 464 (1955).

31. *Bridges v. F. H. McGraw & Co.*, 302 S.W.2d 109 (Ky. App. 1957) (court treated state substantive law as controlling although the issue was not contested); *Karcz v. Luther Manufacturing Co.*, 155 N.E.2d 441 (Mass. 1959); *Springer v. Powder Power Tool Corp.*, 348 P.2d 1112 (Ore. 1960).

32. See Meltzer, *The Supreme Court, Congress, and State Jurisdiction over Labor Relations*, 59 COLUM. L. REV. 269 (1959); Isaacson, *The Implications of the Recent Supreme Court Decisions on Labor Arbitration*, 13 RECORD OF N.Y.C. B.A. 67 (1958).

the same forums and under the same substantive law. The *Westinghouse* case prevents that and in this respect is in conflict with the national policy of uniformity in the regulation of labor relations. It has been suggested that this case will be overruled if the issue is presented again.³³ This position would seem to be supported somewhat by the result in the *Enterprise* case; for it would seem that the union's interest would be satisfied if the employer is compelled to arbitrate and that the enforcement of the award would fall more nearly into the category of uniquely personal rights. Consequently, the Court's allowing the union to enforce the arbitrator's award would seem to suggest that a retreat from *Westinghouse* is occurring, although there was no discussion of this in the *Enterprise* case and although the *Westinghouse* case was not overruled.

It is submitted that the most expeditious remedy would be a legislative overruling of *Westinghouse* by amending Section 301 so that any right which arises from a collective bargaining contract may be enforced in the federal courts. Such a course would eliminate the anomaly that exists today because of the *Westinghouse* decision and would result in all rights in a collective bargaining contract being governed by the same substantive law.

Peyton Moore

Recovery of Stolen Paper Money Under the Louisiana Civil Code and the Negotiable Instruments Law

Article 2138¹ of the Louisiana Civil Code provides that if a debtor give a thing in payment of his obligation, which he has no right to deliver, his obligation is not discharged and the owner may recover his goods, unless the obligation has been discharged by the payment of money or things which are consumed in use, and the creditor has used them; in which case

33. Isaacson, *The Implications of the Recent Supreme Court Decisions on Labor Arbitration*, 13 RECORD OF N.Y.C.B.A. 67 (1958).

1. LA. CIVIL CODE art. 2138 (1870): "If the debtor give a thing in payment of his obligation, which he has no right to deliver, it does not discharge his obligation, and the owner of the thing given may reclaim it in the hands of the creditor, unless the obligation has been discharged by the payment of money, or the delivery of some of those things which are consumed in the use, and the creditor has used them; in which cases neither the money nor the things consumed can be reclaimed, and the payment will be good."